CHOICE OF LAW AND CHOICE OF FORUM CLAUSES IN INTERNATIONAL CONTRACT – A NECESSARY PROBLEM?

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CHOICE OF LAW

Choice of law in every contract is a system of law or a body of rules which governs the various aspects of the contract and determines the legality of the contract. Based on different legal traditions and evolution of contracts law different expressions have come up to denote this *choice of law* clause in the contracts[432]. In English common law system it is referred as "the proper law of the contract" which has certain specific positivistic undertone. This position is articulately summarized by Judge Brown as "A contract is the creature of its proper law, and it is a reference by the parties to a system which is to give life to the contract"[433][434]. Thus, in other words we can say that choice of law is "*the system of law which governs the validity and interpretation of the contract, the right and obligation of the parties and the consequences of the breach of the contracts*"[435][436]. Whilst in other jurisdictions it is termed as the "governing law" or "the applicable law". This trend grew out after few international conventions on contractual agreements like 'Rome convention on the law applicable to contractual Obligation (1980)[437]' and the 'Mexico Convention on the Law applicable to International Contracts (1994)[438]. The intention behind this was to include rules and norms in the choice of law clause other than the laws applied by the Common Law[439].

The purpose of including this clause in the contracts is to express the terms and conditions of the contracts the parties are agreeing to. Through this clause, the parties attain a certainty and clarification about what laws are going to be applied in their contract. This allows the parties to analyze their legal position in confidence. And that is why, it is rare for two contracting parties to not to include any choice of law clause in their contract. However, if in case they

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[432] A.F.M. Maniruzzaman, *Choice of law in International Contracts : Some Fundamental Conflicts of Law issues*, Journal of International Arbitration, Kluwer Law International, Vol 16 No. 4 December 1999 pp 141-172
[433] R. Brown, *Choice of Law provisions in Concessions and Related Contracts*, 39 M.L.R. (1976), pp 625-638
[434] See also, A. Broches, *Choice of Law Provisions in Contracts with Governments in International Contracts*,(Thirteenth Anniversary Symposium, Parker School Studies in Foreign and Comparative Law)
[435] D.R. Thomas, *Arbitration Agreements as a signpost of proper law*,(1984) LMCLQ p 141
[436] See also E. Spiro, *Re-Examination of Proper Law*, in Essays in honor of C.M. Smitthoff, pp 341-357
[437] EC Convention on the Law Applicable to Contractual Obligations (Rome 1980), 1980, O.J. (L/266)
[438] Inter-American Convention on the Law applicable to International Contracts (Held at Mexico City, 17 March 1994), 33 I.L.M., 732 (1994) et seq.
[439] *Supra* Footnote 2

omit it, it becomes a serious legal issue because in that situation it is left upon the court to decide what laws should be applied in the contract. The situation becomes more complicated when the contract is an international contract and two completely different set of laws are applicable in the parties' domicile. Justice Mann's comment in the English case of *Apple corps Ltd v. Apple Computer Inc.*[440] succinctly yet satirically shows what kind of problem the lack of one choice of law clause becomes for the forum when he says

> "*The evidence before me showed that each of the parties was overtly adamant that it did not wish to accept the other's jurisdiction or governing law, and could reach no agreement on any other jurisdiction or governing law. As a result, the relevant agreement contains no governing law clause and no jurisdiction clause. In addition neither party wanted to give the other an advantage in terms of where the agreement was finalized. If their intention in doing so was to create obscurity and difficulty for lawyers to future years, they have succeeded handsomely*[441]*.*"

The above mentioned quote thus, explains how important it is to have a governing law clause in International Contracts. This problem however, has kept dealing jurists for a long time till now which shall be discussed later while dealing with the research questions[442]. But the problems do not end here only. A different set of problems arrive when we sit up to set the law clauses in such contracts. The very first question that hits us is what will be the outcomes of selecting a specific law for a certain contract[443]. For example if the contracting parties belong to different jurisdictions like United States and Germany, what outcome will the laws have if/when legal problems persists? Then, when we consider arbitration process, the governing law clauses affect them substantially. This again, will be dealt in great length while discussing the research problems. Other than that, few basic questions will also be dealt like up to what extent the parties should have the freedom to decide the law of the contracts.

CHOICE OF FORUM

Choice of forum clause in the contract designates the court and location where the parties would like to have their legal disputes resolved. It is commonly believed that a forum selection clause

[440] EWHC (2004) 768 ch.
[441] Retrieved from https://www.ashurst.com/doc.aspx?idresource=4721 last seen 09 September 2015 19:50
[442] See Richard D Gluck, *Should there be Choice of Law and Choice of Forum Selection Clauses in International Contracts?*, Public Contract Law Journal, Vol. 11, No. 1 (November 1979) American Bar Association, pp 103-129
[443] See Craig M. Gertz, *The Selection of Choice of Law Provisions in International Commercial Arbitration: A Case for Contractual Depecage*, 12 Nw. J. Int'l L. & Bus. 163 (1991-1992)

in international contracts is desirable and necessary because, in addition to the choice of law clause, it adds stability to the transaction, encourage uncertainty of where a dispute would be resolved and give effect to the manifested intent of the parties[444]. This belief has been further held by the US Supreme Court in the case of *M/S Bremen v. Zapata Off-Shore Co.*[445] where Chief Justice Burger recognized that "we cannot have trade and commerce in world markets exclusively on our terms, governed by our laws and resolved in our courts". In this paper we shall see the judicial trends regarding Choice of Forum clause, how US, UK and European Jurors decide the legality of this clause. We shall also see the reasonableness of this clause and give a few examples of how countries perceive the forum selection clauses.

RESEARCH QUESTIONS

This paper tries to answer the following issues.

1. How much freedom does two contracting parties have while deciding the choice of law clauses?
2. In terms of arbitration, what effect does the choice of law clause have on the outcome of the contract?
3. What is the reasonableness of the choice of forum provision?

RESEARCH METHODOLOGY

In this report the doctrinal method of research has been used. Doctrinal method refers to library research, research or process done upon some texts, writings or documents as well as journals relating to the subject. Online research and online journals form an important part of the entire research work. The issues are dealt with objectivity and are easily discernible.

More focus has been given to online journals and magazines because they are thoroughly updated and incorporates latest issues. All the data are reliable since they have been taken up from the authenticated sources only.

OBSERVATION

[444] Lars O. Lagerman, *Choice of Forum Clauses in International Contracts: What Is Unjust and Unreasonable?*, The International Lawyer, Vol. 12, No. 4 (Fall 1978),American bar Association, pp 779-794
[445] 407 U.S. 1 (1972)

1. ***How much freedom does contracting parties have while deciding the choice of law clauses?***

Peter Nygh, in first two chapters of his book *Autonomy in International Contracts*[446] has tried to trace the historical origins of the ability of the parties to choose the law and the source of that autonomy. He found that that this kind of freedom was very limited owing to the concern that the law territorially applicable to the parties should not be evaded[447]. It was the case of *Vita Food Products v. Unus Shipping Co. Ltd*[448] which brought a major turning point. For the first time the freedom of parties to choose their law was established[449].

However from time to time the point of contention has remained the same. The major issues have been that what if the law chosen in the contract is enforceable in one state and not in the other. Or what if the application of the chosen law though enforceable[450], is not beneficial for the fundamental policy of another state with greater interest in the resolution of particular issue than that of the state whose law has been chosen[451]. When these questions come into being, the ruling of *Vita Foods* appears to be bleak and vary. Hence Peter Nygh suggests in his book that since right to choose is logically prior to the choice of law, the choice of law should be governed by *Lex fori*[452]. He further supporting his point argues that if the parties have the autonomy to choose the forum which is to govern the law, indirectly their autonomy to choose the law is also kept intact. The problems however remains the same. Still there is no viable answer as to what will happen in the case of conflict of law.

Let us take a look on the American provisions regarding the choice of law clause for a different opinion. The American take on this is not as extreme as its British Counterpart. And it hangs

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[446] See Jonathan Harris, *Review: Contractual Freedom in the Conflict of Laws*, Oxford Journal of Legal Studies, Vol. 20, No. 2 (Summer, 2000) Oxford University Press, pp 247-269

[447] Jonathan Harris, *Review: Contractual Freedom in the Conflict of Laws*, Oxford Journal of Legal Studies, Vol. 20, No. 2 (Summer, 2000) Oxford University Press, p 2

[448] AC (1939) 237

[449] This was the case of United Kingdom only. In this case the state went so far as to tell that if parties are choosing the law of a particular state, that state doesn't need to be connected with the transaction. This was a major turn around since it before that it was held that state needs to be there to peep in to every contract made on their territory *i.e.* .choice of law should be made *Lex fori*. With this, the arena of International Contracts achieved a broad spectrum.

[450] Richard J. Bauerfeld, *Effectiveness of Choice-of-Law Clauses in Contract Conflicts of Law: Party Autonomy or Objective Determination?*, Columbia Law Review, Vol. 82, No. 8 (Dec.,1982), Columbia Law Review Association, Inc., p 4

[451] *Ibid*

[452] Jonathan Harris, *Review: Contractual Freedom in the Conflict of Laws*, Oxford Journal of Legal Studies, Vol. 20, No. 2 (Summer, 2000) Oxford University Press, p 3

out in a balance between the state laws and parties autonomy. The American law suggests to have a reasonable relationship between the state laws and the transactional choice of law. It has evolved to the acceptance of the proper law of contracts according to the express or implied choice of the parties provided there is reasonable relationship with the transaction. Also, in order to avoid conflicts, the American legal system has sometimes also submitted to have a neutral jurisdiction or arbitration[453]. In simple words, in American legal system we see that the law provides the parties to have their freedom in choosing the law but it should not evade few mandatory provisions of the American law. Yet, as shown in the case of *Tzortzis v. Monark Line*[454] this is by no means a surrender to the objective proper law. In this case it was held that the contract for the sale of a ship which provided for arbitration in London was to be governed by English laws even though the contract was most substantially connected with Sweden. This proposition is supported by the Draft United Kingdom – United States Convention on the Reciprocal Recognition and Enforcement of Judgement in Civil Matters[455].

From the above discussion few things come out as the points to debate upon. We saw that in one way or the other, the state plays a significant role in deciding the autonomy of the parties in deciding their law provision. One cannot decide their law if it contradicts with the laws of one country even if it supports the law of other country. The UK – US Convention on the Reciprocal Recognition and Enforcement of Judgement in Civil Matters sees to that. One should keep their laws, be it partly or wholly, in sync with the state laws. In this way, it appears that the autonomy of the parties and their liberty to decide their laws are kept in check. In order to prevent the greater chaos, one needs to put some slight restrictions on the autonomy of the parties.

2. ***In terms of arbitration, what effect does the choice of law clause have on the outcome of the contract?***

[453] Holtzman, *Arbitration in East-West Trade*, 9 INT'L Law. 77 (1975)..
[454] [1968] 1 W.L.R. 406.
[455] Article 8(d) of the Convention provides that "if the defendant or the successor in his interests so requests recognition or enforcement of a judgement is not required by this convention… (d) Where under the rules of the private international law of the court addressed, its own law would have been applicable to the case if it had been brought into that court and the judgement disregards provision of that law which would have been applied by that court even if the parties have chosen another system of law…

The choice of law becomes a determinative factor when it comes to the arbitration of a contract. We have seen in previous section how the contract is affected transnationally due to the difference in their laws. This difference of laws sometimes becomes the determinative factor in deciding which side is going to emerge victorious in the arbitration[456]. For that purpose, we are going to select two countries and study their provisions in order to understand this concept in a better way. Let us take USA and Germany for example[457]. Two countries heavily involved in International Commerce. In following tables we are going to look upon the factors and criteria pertaining to the purpose of the arbitration issues of an international Contract.

Validity of a Contract

The background of this lies in the premise that different legal systems has different provisions based upon which the validity of the contract differs. Of course it depends to a larger extent on the Choice of Forum clause but all in all it is the law which determines whether the contract will be valid or not. Let us understand this with an example. X, a firm based in United States agrees to sell a given number of widgets to Y, a German company. There is a clause in the contracts according to which Y requires X to pay 50% of the contract price in case the X fails to deliver the product. The motto behind this was to deter X from breaching its obligation. But later, X finds a higher bidder for the widgets and defaults. Now the issue at hand is, is the agreement to pay the default penalty valid?

Now in this case, the laws regarding the validity of penalty clauses are different in US than Germany. Thus the country whose law has been chosen to govern the contract becomes the determining factor in who will win the case. In United States the law prohibits the enforcement of agreement for the payment of penalties if the contract is breached. The US laws needs a reasonableness factor in the pre-determined penalty agreements. Now unless the breach hasn't

[456] Craig M. Gertz, *the Selection of Choice of Law Provisions in International Commercial Arbitration: A Case for Contractual Depecage*, 12 Nw. J. Int'l L. & Bus. 163 (1991-1992) p 4

[457] The reference to the United States' "legal system" is misleading to some extent. The use of the term implies that there is a single set of contract principles applicable in the United States. There are, however, 50 separate state jurisdictions that establish their own contract laws. For clarity, this section discusses legal principles that are essentially consistent among the jurisdictions, and it will refer to these principles as "United States law." The Federal Republic of Germany, on the other hand, maintains a unified law of contracts; thus, the same type of terminological difficulties do not develop.

happened, we cannot actually count the reasonableness of the penalty[458]. Thus, such penalty cannot be valid[459].

In contrast the general rule in Germany states that a defaulting party must pay any penalty to which it has previously been agreed upon[460]. Thus if the governing law of the contract is German law, then Y will have the chance of winning the case than X. This is how the validity of a contract differs in different jurisdiction.

Performance of a contract

This section is also an example to illustrate the impact of variability in the governing law clauses. What happens when it becomes impossible for the parties to perform the contract? Here again we take the example of United States and German legal systems. For example, suppose X, the American firm enters into a contract to sell widgets to Y, an Iranian firm. After several month of untroubled performance, a war breaks out in Iran and the contract becomes impossible to perform.

In United States, following the Doctrine of commercial impracticability the parties will be excused to carry forward the contract. The party will just have to prove that an exigency has occurred due to which the performance of the contract has become impossible. In the case of *McDonells Douglas Corp. v. Islamic Republic of Iran,*[461] the same thing happened when an American Defense manufacturer was sued by the State of Iran for the non-performance of the contract. The Court found that due to the political instability in Iran it was 'commercially impracticable for the defense manufacturer to provide the materials to the country[462].

But if the Garman laws are taken into consideration the result of this case would have been different. The German High Courts have come up with the doctrine of 'foundation of transaction' which deals with the issues of impossibility, commercial impracticability and frustration of contract[463]. The general principle according to this doctrine is that, the court may equalize the position of the parties and compensate for the disruptions caused by the unforeseen

[458] U.C.C. § 2-718(1) (1977);
[459] See also, Samson Sales, Inc. v. Honeywell, Inc., 12 Ohio St. 3d 27, 28, 465 N.E.2d 392, 394 (1984)
[460] BGB § 339; Judgment of November 27, 1974, Bundesgerichtshof, Neue Juristische Wochenschrift 1975, 163
[461] 591 F. Supp. 293 (E.D. Mo. 1984), *aff'd on other grounds*, 758 F.2d 341 (8th Cir. 1985).
[462] *Ibid*
[463] 2 Muenchener Kommentar Zum Buergerlichen Gesetzbuch 205 (H. Heinrichs ed. 1984)

event. In American laws, there is no provision for compensation. In Germany, there is. And there has been a case[464] where a German court had to decide the matter between an Iranian and a German party where the delivery of alcohol had become impossible for the German party due to the ban on Alcohol in Iran. In this case the court decided that the foundation of the contract has been destroyed. Thus, the contract will deemed to be cancelled. But at the same time, the two parties will have to jointly bear the cost of damages and German brewery had to partially repay the Iranian company for the losses[465].

In this way, we see how the choice of law clause determines the arbitration of the contract. Thus it becomes important for the parties to choose their choice of law clause appropriately in order to be at an advantageous position at arbitration.

3. ***What is the reasonableness of the choice of forum provision?***

It is commonly believed that adding the choice of forum clause or simply the forum selection clause is desirable and necessary since it adds to security of the contracts and prevents confusion. And the same has been held true in different cases like *M/S Bremen v. Zapata Off-Shore Co*[466]. Case also. Where United States Supreme Court recognized the validity of this assumption and upheld the forum selection clause in international contracts.

However there is no blanket approval for the clause but it is limited to the approval of its just and reasonable cause[467]. In this section the reasonability of this clause and up to what extent the parties should have the right to decide upon this clause has been discussed. Simultaneously, the recent judicial trends for the same has been looked upon. For the sake of convenience, the paper shall look upon the laws of United Sates and United Kingdom and try to differentiate between the legality of this clause in these two legal systems. And finally after all this, the paper will try to have a discussion about the relationship between the choice of law and choice of forum clauses and how ultimately they affect an international contract.

Both the judicial systems, of England and America have looked upon this clause very differently. Before *Bremen* case the American legal system have frowned upon this clause to the extent that it had become a tradition[468]. Their point of contention as shown in the case of

[464] Judgment of February 8, 1984, Btmdesgerichtshof, Neue Juristische Wochenschrift 1984, 1746.
[465] *Ibid*
[466] 407 U.S. 1 1972
[467] See 4407 U.S. 1, 15 (1972
[468] Lars O. Lagerman, *Choice of Forum Clauses in International Contracts: What Is Unjust and Unreasonable?*, The International Lawyer, Vol. 12, No. 4 (Fall 1978),American bar Association, p 3

Carbon Black Export v. the S/S Monrosa[469] was that "*the universally accepted rule that agreement in advance of controversy whose object is to oust the jurisdiction of the courts are contrary to public policy and will not be enforced.*[470]"

While the British courts, on the other hand have traditionally inclined to accept the choice of forum clause in to their contracts wholeheartedly. There has been no case where the British Court have rejected a case on the ground of *forum non convenience.*[471] In Scotland however, like American courts an appeal can be rejected on the ground of the unsuited forum[472]. Moreover, the Court of England will also avoid from acting in derogation of the Choice of Forum clause mentioned in the contract that is unless, the courts sees that the trial at the foreign court, under given circumstances will be unjust or unsuitable as it was seen in the *Fehmarn's* case[473][474].

The American court, in the *Bremen* case proposed a theory of reasonability. In this theory few certain parameters were proposed according to which the choice of forum theory was said to govern. We shall discuss in brief few of those parameters.

Substantial Inconvenience

In the previous section it was discussed how choice of law clause plays an important role in the arbitration process. This parameter looks to be just a continuation of this. In *Zapata* case it was held that the party seeking to escape the contract carries a heavy burden to overcome the strong presumption that contractual choice of forum is reasonable[475]. It was further contended that if a party would lose his day in the court just due to the forum selection clause the choice would seem to be unreasonable and since the parties could not originally have intended to select such a seriously inconvenient forum the court would be justified in holding that the choice was unreasonable and not within the true intention of the parties[476]. Furthermore this has been justified in the case of *Copperweld Steel Company v. Demag – Mannessmann Boehler*[477]. In

[469] 8254 F.2d 297, 300 (5th Cir. 1958
[470] *Ibid*
[471] George A. Zaphiriou, *Choice of Forum and Choice of Law Clauses in International Commercial Agreements*, 3 Md. J. Int'l L. 311 (1978) p 6
[472] *See* Restatement (Second) Of Conflict of Laws § 84 (1971).
[473] [1958] 1 W.LR. 159 (C.A.).
[474] In this case, the English court has turned down the jurisdiction clause in the favour of the English courts. They found that the witnesses were readily available in England, and there was no conceivable reason for the trial to be held in Russia. Hence, the English Court overrode the jurisdiction clause and ordered to run the trail in England.
[475] 407 U .S. 1, 18(1972)
[476] See Model Choice of Forum Act, Comment to § 3(3).
[477] 54F .R.D. 539 (W.D. Pa. 1972); 347 F. Supp. 53 (W.D. Pa. 1972); 354 F. Supp. 571 (W.D. Pa. 1973).

this case, the two contracting parties were of US and Germany and there was one clause which read as

> *"Any disputes arising out of the terms and contracts shall be brought before the court of justice having jurisprudence in the area where the supplier's main office is located*[478]*"*

In this case too, the court refused to entertain this clause and held that it would be substantially inconvenient to require the American plaintiff to try his case in Germany[479].

When looked closely, it is found that in the *Fehmarn*'s case this was one of the major issues which was contended. The choice of forum clause was substantially inconvenient and that was why English court refused to entertain that clause.

Denial of an Effective Remedy

The second reason is quite constitutional in nature and a reason why almost every other *Forum non convenience* petition is filed. That the justice will be denied if this particular court runs the trial. This reason majorly overlaps with other reasons as well. Thus, there has been few close and complicated judgements regarding this clause. It becomes really difficult to decide how justice is to be served in a particular case and to decide the liability of the parties. For example, In *Gaskin v. Stumm Handell Gmbh*[480] the plaintiff, an America company had filed a case challenging the contract on the basis that the contract was drawn in German language and there was this clause which stated that all the disputes will be solved in the courts of Germany. He did not know how to read German or he would not have entered the argument in the first place. The plaintiff contended that in this case the choice of forum clause would be overruled since it denies him his right to effective remedy. Court decided in the favor of the defendant stating the plaintiff's own negligence cannot be the reason to quash the judgement and thence, the sanctity of the contract was maintained[481]. So in this way, the question becomes really complicated. But

[478] 354 F . Supp. 571, 572 (W.D. Pa. 1973).
[479] *Supra* note 47
[480] 39 OF. Supp. 361 (S.D.N.Y. 1975
[481] The plaintiff in Gaskin was apparently a sophisticated businessman and his claim amounted to $306,260.40 plus interest. However, choice of forum clauses have been upheld even where the plaintiff lacked business sophistication and had a relatively small claim, see the long line of "passage contract" cases cited and discussed in *McQuillan v. "Italia" Società Per Azione Di Navigazione*,3 86 F. Supp. 462 (S.D.N.Y. 1974)

in the long run, this reason plays out to be a key point in determining the validity of choice of forum clause.

Unconscionability

A third reason to deny the right to choice of forum can be that it was acquired by misrepresentation, duress, and the abuse of economic power or other conscionable means[482]. As contended in the *Gaskin* case. The quintessence for this can be the case of *Leasewell Ltd. v. Jack Shelton Ford, Inc.*[483] in this case, it was decided that if there is no equal bargaining position between the parties and the parties are not fully aware of the choice of forum provision then the choice of forum clause shall be neglected in the court of law. The courts rarely rests the decision on one factor but prefer to consider the various elements of unreasonableness together. And if court find such an unreasonable behavior, it shall determinatively affect the choice of forum clause[484].

CONCLUSION

The paper elucidated upon the various aspects of choice of law and choice of forum clauses and how do they lead the international transactions. What is the need for choice of law and choice of forum provisions, what makes them an integral aspect of any given contract and what happens when one doesn't have these clauses? It was also discussed whether up to what extent the parties have or *should* have the right to decide the law and forum in a contract.

In present day world, where the distance between borders of two nation has decreased to the distance of few clicks, and where due to the increasing influence of globalization, the international trade knows no limits, it becomes quite necessary that the contracts include the pre-requisite choice of forum and choice of law clauses. It not only provides an organized structure, an organized protocol to follow in case of any dispute, it also brings clarity to the contract.

The question of the rights of parties as to what extent they can have their right to choose governing law clauses and governing forum more or less depends upon the flexibility of state laws and the governing public policies. While in countries like UK the state has a policy not to interfere much into the rights of the parties the US and German laws differ upon the same.

[482] *Supra* note 47
[483] 423 F . Supp. 1011 (S.D. W. Va. 1976).
[484] *Supra* note 47

However on a closer probe, the author finds that the basic essence of the law related to choice of law and forum in all the three countries are same *i.e.* to protect the interests of state as well as trying to maintain a sync with the parties autonomy of contractors. Thus this questions hangs in perpetual limbo if asked where is the line at which the rights of state ceases to exist and rights of parties begin and vice versa. It is better concluded that the situation differs from case to case and should be decided accordingly. There can be no straightjacket formula for the same.

But the real problem happens when there is a clash of legal provisions of the territorial laws between the contracting parties. As elucidated in the second observation, the question of governing laws becomes very crucial in case of disputes arising out of such conflicting provisions. There are number of international conventions and laws like Rome II regulations, UNIDRIOT principles, United Nations Convention on Contracts for the international sale of goods etc. to name a few which can be adopted in order to avoid such clashes and confusion which should be acceptable by the court of laws of both the contracting parties' nations[485]. The other effective method of avoiding such problem is adopting a neutral forum where none of the parties' territorial laws are in play. It will provide both the parties a level playing field.

The article strives to establish that certainty and predictability are the qualities every contract should try to establish. In case of International Contracts, achieving this becomes increasingly challenging given the pre-conceived laws of nations and opinion of human mind. But if the parties omit the choice of law and choice of forum clauses they should be aware that they are omitting a very special item from the contract. In present day world where laws are as mercurial as they could be, chains of thought shifting like gears, omitting these clauses will just bring the uncertainty and clamor which no party would have bargained for.

[485] See also Dana Patrick Karam, *Conflict of Laws – Contracts*, Student Symposium, Conflict of Laws in Louisiana, Volume 47 Number 5, May 1987